

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RESPIRONICS, INC. and RIC)
INVESTMENTS, LLC.,)
 Plaintiffs,)
)
 v.) Civil Action No. 04-336
)
INVACARE CORP.,)
 Defendant.)

ORDER OF JURY SELECTION PROCEDURE

Once the jury panel has been placed in the courtroom,
the Deputy Clerk will administer the following oath to the
panel, en banc:

"You and each of you do solemnly swear and affirm
that any statement you make in this room in the
cause now trying shall be the truth, the whole
truth, and nothing but the truth, and you do so
under the pains and penalties of perjury."

Once the oath has been administered, the Courtroom Deputy
will then address the panel as follows:

1. "The caption of this case is Respironics, Inc. and RIC Investments, LLC v. Invacare, Corp. at Civil Action No. 04-336. Do any of you know anything about this case?"
2. "The PLAINTIFFS in this case are Respironics, Inc. and RIC Investments, LLC. Are any of you, or any member of your immediate family, an employee or former employee or shareholder of either Respironics, Inc. and RIC Investments, LLC?"
3. "The DEFENDANT in this case is Invacare, Corp.. Are any of you, or any member of your immediate family, an employee or former employee, or shareholder of Invacare, Corp.?"
- _____ 4. "The PLAINTIFFS are represented by Attorneys Thomas W. McGough, Jr., Gene Tabachnick and Joshua Bish of the
_____ law firm of Reed Smith."

5. "The DEFENDANT is represented by Attorneys William Eric Soller of the law firm of Pietragallo, Bosick and Gordon, Charles Lyon and Ned Pejic of the law firm of Calfee, Halter and Griswold, and Ernest Mansour of the law firm of Mansour, Gavin, Gerlack and Manos."
6. "Do any of you know these attorneys? Have they, or any member of their firms, ever represented you or a member of your immediate family, if you know?"
7. "Do any of you have any difficulty in seeing or hearing, or understanding the English language, that would impair your full attention to the trial?"
8. "Do any of you take medication that might make you drowsy or prevent you from giving your full concentration during the course of this trial?"
9. "Do any of you have any physical problems that would make it difficult for you to sit as a juror in this case?"
10. "Witnesses in this case may be any or all of the following:

Elias Diacopoulos
Michael Mascara
Gerald McGinnis
Douglas Mechlenburg
Magdy Younes
Robert Messenger
Samuel Shelnutt
Make Morris
David M. Rapoport
Cheryl Hanley
Eugene Scarberry
Alan R. Schwartz
Robert L. Sheridan
John H. Fiore
John G. Webster

Do you know any of these witnesses?"

After the above questions have been asked of the jury, en banc, the jurors will be seated in the jury box. A panel of 13 jurors will be seated in the courtroom. Individual voir dire will then begin in the jury deliberation room in the order in which the jurors were seated. Pursuant to Local Rule 47.1(C), the Courtroom Deputy will ask each juror the following:

1. "Where do you live (city and county only)?"
2. "What is your occupation and for whom do you work?"
3. "Are you married? If so, what is your spouse's occupation and for whom does he or she work?"
4. "Do you have any children? Are they in school or employed? If employed, for what do they do and for whom do they work?"
5. "The defendant, Invacare, is best known for its wheel-chairs, walkers and oxygen products. Have you, or any family member ever used an Invacare product?"
6. "Do you, or any member of your immediate family, suffer from obstructive sleep apnea? If so, are you familiar with devices used to treat sleep apnea? What devices have you used, or are you familiar with? Have they helped you, or your family member sleep better? Please describe how long the devised to treat sleep apnea have been used."
7. "Do you own or rent your current home?"
8. "Do you have an attorney? If so, what is your attorney's name? Have you ever had the occasion to use an attorney? If so, for what?"
9. "Have you ever been a party to a lawsuit?"
 - (a) plaintiff or defendant?
 - (b) type of lawsuit and result?
 - (c) effect on jury service?
10. "Have you ever applied for, or been granted, a patent? If so, please describe the patents for which you have applied, or the patents that you hold."

11. "What is your educational background?"
12. "Have any of the questions asked brought to your mind anything that you wish to volunteer?"
13. "Is there any reason you couldn't sit on this jury?"

At the conclusion of the individual voir dire, the Deputy will announce a short break to allow counsel to consider the jurors' responses. A total of six (6) strikes will be made. The parties will make alternating strikes with the plaintiff proceeding first. Each challenge is to be labeled (i.e. "P-1" is plaintiff's first challenge; "D-2" is defendant's second challenge). Those stricken jurors will be removed from the jury box. The remaining panel will be the jury selected for this trial.

When seating a jury panel, the first seven (7) names from the panel of 13 seated is the PRIMARY panel. This means that if any of the first seven (7) jurors are selected for this jury, they are to remain in their seats, with the remaining jurors to fill in the rest of the panel.

If, for example, jurors 1, 3, 5 & 8 are selected, as are jurors 10, 12 & 13, the panel will be seated in the following manner:

- Juror #1 remains juror #1.
- Juror #8 becomes juror #2.
- Juror #3 remains juror #3.
- Juror #10 becomes juror #4.
- Juror #5 remains juror #5.
- Juror #12 becomes juror #6.
- Juror #13 becomes juror #7.

Once the jury is seated in the jury box and the Judge is on the bench, but prior to the beginning of testimony, the Courtroom Deputy will administer to the jury the following oath:

"Do each of you solemnly swear or affirm that you will well and truly try the matters in issue now on trial, and render a true verdict, according to the law and the evidence, and that you do so under the pains and penalties of perjury."

After the entire case has been presented to the jury and they prepare to deliberate on the issues presented, the Deputy Clerk will be sworn in as the Bailiff by the Law Clerk present, who will administer the following oath:

"You do solemnly swear to keep this jury together in some private and convenient place, and not to permit any person to speak to, or communicate with them, nor to do so yourself unless by order of the court or to ask whether they have agreed on a verdict, and to return them into court when they have so agreed, or when ordered by the Court, so help you God."

BY THE COURT:

s/Gary L. Lancaster, J.
Hon. Gary L. Lancaster,
United States District Judge

Dated: November 5, 2007